IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 915 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

ABDUL KARIM HASAN ALI SAIYAD SINCE DECEASED THRO' HEIRS

Appearance:

1. Special Civil Application No. 915 of 1997

Ms. Krina Thakkar for MR YOGESH S LAKHANI for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1-1/1

..... for Respondent No. 1/2-1/5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Thakkar for the petitioner corporation and Mr. Brahmbhatt for the respondent workman.

By way of this petition, the petitioner has challenged the award made by the labour court, Baroda in Reference No. 133 of 1987 dated 7th August, 1996 wherein the labour court concerned has set aside the order of dismissal and has granted reinstatement with continuity of service with fifty per cent of the back wages for the intervening period from 8th July, 1987 to 7th August, 1996 and cost of Rs.1,000.00 has also been awarded by the labour court. Affidavit in reply to the present petition has been filed by the respondent workman. This Court has issued rule on 23rd April, 1997 and learned advocate Mr. Brahmbhatt appearing for the workman has waived service of rule. Initially, while issuing notice on 30.1.1997, operation of the impugned order was stayed by this Court which has subsequently been modified by this Court on 23.4.1997 and it has been ordered that the name of the respondent workman shall be included in the list of Badli workers and during the pendency of the petition for all purposes he will be treated as Badli worker as per his status which was enjoyed by him at the time of termination of service.

In view of the said modification of the interim order made by this Court, the respondent has been reinstated in service. Thereafter, during the pendency of this petition, respondent has expired in the month of December, 1997 and by way of civil application no. 9964 of 2000 filed by the corporation, heirs and legal representatives of the deceased respondent were brought on record of this petition.

During the course of hearing of this petition, learned advocate Ms.Thakkar for the petitioner has submitted that at the time when the accident took place, two persons were injured by the respondent workman and at that time, the respondent was working as Badli Driver and therefore, show cause notice was served upon the respondent calling for his explanation. After considering his explanation, services of the respondent were terminated in the year 1981 and, therefore, before terminating the services of the respondent, an opportunity was given to the respondent but the labour court has come to the conclusion that no opportunity was given to the respondent and no departmental inquiry has been initiated and, therefore, the labour court granted relief in favour of the respondent which is contrary to law. She has submitted that in the instant case, termination is of the year 1981 and the dispute was raised in the year 1987 on 6th February, 1987 and, therefore, in view of such delay in raising dispute, the

labour court ought not to have entertained the reference and it ought to have been rejected by the labour court on the said ground alone. She has submitted that looking to the award made by the labour court, the respondent was not examined before the labour court and he has not deposed before the labour court that he remained unemployed during the intervening period. Inspite of that, in absence of the evidence about the unemployment of the workman during the intervening period, the labour court has granted back wages to the extent of 50 per cent for the intervening period for a period of about eleven years. She has submitted that for want of evidence to that effect, the labour court has not been justified in awarding back wages. She has also submitted that the labour court has ultimately come to the conclusion that the misconduct is found to be proved as there was negligence on the part of the respondent and therefore, the labour court has denied the back wages to the extent of 50 per cent and has granted 50 per cent of the back wages for a period of about 11 years to a workman who has rendered service of about one year and in doing so, the labour court has committed gross error.

On the other hand, learned advocate Mr. Brahmbhatt has defended the award in question by making the submissions in terms of the averments made in the affidavit in reply and has submitted that the labour court has committed no error and, therefore, this petition is required to be dismissed.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question. The accident took place in the year 1981 on 28th July, 1981when the respondent was on duty from Makarpura to Nyaya Mandir route and in the said accident, two persons received injury and in view of the said accident, the petitioner served notice to the respondent and thereafter explanation was given by the respondent and in the explanation, the respondent had denied the allegations about negligence in driving the vehicle. However, though the allegations about negligence in driving the vehicle and also about the responsibility of the accident were denied by the workman, the petitioner has not initiated any departmental inquiry against the respondent and has straightway deleted the respondent's name from the list of Badli Drivers. Admittedly the respondent was working as Badli Driver and in view of the aforesaid misconduct, his name has been deleted from the list of Badli Drivers without holding any departmental inquiry. The question has been examined by the Division Bench of this Court in

case of Gujarat State Road Transport Corporation versus Chandulal G. Rasadiya reported in 1993 (1) GLR page 442. In the said decision, the contention raised on behalf of the corporation was that the badli workers are not having the status of ST Employees and they are free to get employment elsewhere at their free will. In para 9 and 14 of the said judgment, it has been observed by the Division Bench of this Court as under:

"9. In our view, the aforesaid contention of the learned advocate for the petitioner cannot be accepted when a Badli worker's name is to be removed from the waiting list on the ground of his alleged grave misconduct. It is true that "Badli workers" are not employees of the corporation in view of Regulation 16. Therefore, the Discipline and Appeal Procedure is not required to be followed in case of Badli Workers. However, it should be noted that because of the adverse verdict of grave misconduct against the Badli worker-

(i) it would stigmatize him for his life time.
(ii) it would also affect his reputation.
(iii) his chances of getting service in ST Corporation or in Government Department would be bleak, and
(iv) his livelihood may in certain cases would be at stake.

In this type of cases, it would be unreasonable and against the principles of natural justice to hold that as the person is a Badli worker and his name is only removed from the waiting list prepared by the Corporation, there is no necessity of holding a full fledged inquiry. This would be in violation of principles of natural justice as the person would be condemned unheard which would affect him for the life time.It is true that at the relevant time there was no administrative instruction issued by the ST Corporation for holding departmental inquiry against the Badli worker for his alleged misconduct, therefore,the Corporation was not required to follow the procedure prescribed for employees of the ST Corporation for holding departmental inquiry. At the same time, the Corporation has realized this defect and hence on 20th October, 1987, it has issued a Circular that

even with regard to Badli workers, for their alleged misconduct the procedure prescribed for holding departmental inquiry for employees is required to be followed. In any case, as stated above, if the procedure prescribed under the Rules was not applicable at the relevant time, yet, the Corporation was required to follow the Rules of natural justice before arriving at the conclusion that Badli worker has committed grave misconduct.

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14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned advocate for the petitioner that in these cases the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent Corporation. In both the petitions, the Conductors' names are removed from the waiting list on the alleged ground of misappropriation of the bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates the Conductors had not issued the ticket after recovering fare and on such other grounds. In both the cases the Conductors have denied the allegations made against them. Inspite of this, the petitioner has not held any further inquiry. As both the conductors have denied the allegations made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination, if they desired.They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present cases, the Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then, in that case, further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference."

Looking to the observations made by the Division Bench of this Court in the aforesaid decision in light of the facts of the present case, considering the undisputed facts of the present case that prior to terminating the services of the respondent, no regular departmental

inquiry has been held against the respondent workman though the charge of negligence in driving was denied by the respondent, inspite of that, except issuing one show cause notice, wherein the allegations levelled against the workman were denied, yet, without holding any departmental inquiry against the respondent workman, his name has straightaway been removed from the waiting list of Badli Drivers. Such act has been held to be contrary to the principles of natural justice by the Division Bench of this Court in aforesaid decision. Therefore, the view of the labour court is right and is in consonance with the principles laid down by the Division Bench of this Court in aforesaid decision. Therefore, the award of reinstatement is just and proper and the labour court has not committed any error in making such award.

So far as the award of 50 per cent back wages for the intervening period is concerned, the labour court has committed grave error for the reason that from the award in question, it is not becoming clear whether the respondent has been examined before the labour court or not. No such discussion is appearing from the record. No observations to that effect have been made by the labour court. It is settled law that it is the burden upon the respondent workman to prove that he has remained unemployed during the intervening period and if the workman has proved his unemployment during the intervening period, then, it would be the burden upon the employer corporation to prove that the workman has been gainfully employed during the intervening period. In this case, since it was not proved by the workman that he has remained unemployed during the intervening period, therefore, there was no question of rebutting such claim by producing any evidence. However, inspite of such situation, the labour court has awarded back wages to the extent of 50 per cent for the intervening period from 8th July, 1987. Thus, in absence of the evidence of the respondent about the unemployment, the labour court has granted back wages of 50 per cent for the intervening period to the Badli Worker who was not getting continuous work in entire month but was getting the work as and when permanent employee was not available. Therefore, it is not certain that he would have got work for entire period and, therefore, in such a situation, on two grounds, the labour court is not justified in granting back wages of 50 per cent for the intervening period. One is that there is no positive evidence to the effect that he had remained unemployed during the intervening period since there is no deposition of the workman before the labour court and the other ground is that he was working as

Badli Driver and was getting the work in place of regular workman as and when the regular workman was proceeding on leave. Thus, the labour court is not justified in awarding back wages for a period of about eleven years and the award in so far as it relates to back wages, is unreasonable and in making such award, the labour court has committed error which would require interference of this court qua back wages alone. Another factor required to be taken into consideration while making award of reinstatement and back wages is that of delay in raising an industrial dispute. Here, in this case, the respondent's name was deleted from the list of Badli Drivers in the year 1981 and industrial dispute challenging said action was raised by the respondent after about six years in the year 1987. Therefore, according to my opinion, in such a situation, grant of back wages to the respondent workman would be amounting to granting premium to the respondent to which he is not at all entitled and, therefore, this part of the award is required to be quashed and set aside.

For the reasons recorded above, this petition is partly allowed. The award made by the labour court concerned in Reference No. 133 of 1987 dated 7th August, 1996 is hereby quashed and set aside qua back wages alone. It is, however, clarified that this Court has not disturbed the award in so far as it relates to reinstatement of the respondent workman with continuity of service. Rule is accordingly made absolute in terms indicated hereinabove with no order as to costs.

24.4.2002. (H.K. Rathod,J.)
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